IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 145 OF 2003

1. Shri Uday S. Vaidya,
   major, s/o late Shrinivas
   Gopal Vaidya.

2. Shri Harish S. Vaidya,
   major, s/o late Shrinivas
   Gopal Vaidya,
   Both residents of House
   No., Haveli, Kurti,
   Ponda-Goa. ... Petitioners.

versus

1. State of Goa,
   through Chief Secretary,
   Secretariat, Panaji-Goa.

2. The Land Acquisition Officer,
   PWD(Cell)
   Altinho, Panaji-Goa. ... Respondents.

Mr. S. S. Kantak and Ms. Gauri D.S.Bhonsule, Advocates for the Petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Mr. N. K. Sawaikar, Additional Government Advocate for the State.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 23RD JUNE, 2003.

**ORAL JUDGMENT**(PER F. I. REBELLO, J.)

Rule.

Respondents waive service. Heard forthwith.

2. Land belonging to the Petitioners was acquired. An Award came to be passed on 22nd January, 1997. Notice under Section 12 of the Land Acquisition Act, 1894 was issued to the Petitioners to accept the compensation awarded, on 3rd February, 2000. The date for payment was fixed on 22nd February, 2000.

3. A few relevant dates may be set out before framing the issue which has to be considered. Notification under Section 4 of the Act was published in the Official Gazette on 17th March, 1993 for the public purpose as set out therein. Amongst the lands notified was land belonging to the Petitioners surveyed under No.138/I(Part). A declaration under Section 6 came to be published on 20th April, 1994 in the Official Gazette dated 21st April, 1994. Notice under Sections 9 and 10 of the Act thereafter came to be served in the name of late Shrinivas Vaidya, the father of the Petitioners who had expired in the year 1978. The case of the Petitioners is that, at the time the notice under Sections 9 and 10 of the Act was issued by the Land Acquisition Officer, Inventory Proceedings were pending, which were finally concluded by Order dated 22nd April, 1996. On 25th July, 1997, the Petitioner No.1 informed the Land Acquisition Officer the above facts and requested that amount of compensation be apportioned

among Petitioner Nos.1, 2 and one Rajesh Vaidya in equal shares of 1/3rd each, based on the share allotted to each of them in the Inventory Proceedings. The Award was made on 21st January, 1997. The Land Acquisition Officer apportioned the amount of compensation in favour of Petitioner No.1, Petitioner No.2 and Rajesh Vaidya in equal shares of 1/3rd each. The Petitioners were not present personally when the Award was made on 22nd January, 1997.

4. On behalf of the Petitioners, it is contended that the Award having been made on 22nd January, 1997 and as the compensation was paid to them w.e.f. only 22nd February, 2000, they are entitled for interest on the said amount of compensation from 23rd January, 1997 till 21st February, 2000. This is the principal issue in this Petition.

5. Respondent No.2 has filed a reply on behalf of the Respondents. It is pointed out that the Petitioners as also Shri Shrinivas Vaidya filed their representation dated 15th March, 2000, demanding additional statutory interest from 22nd January, 1997 to 22nd February, 2000. A reply was given to the said letter by the Land Acquisition Officer dated 6th June, 2000, wherein the Petitioners and Shri Shrinivas Vaidya were informed that 12% interest was payable from the

date of publication of Notification issued under Section 4(1) of the Act to the date of the Award of the Collector or the date of taking possession of the land whichever is earlier and in the instant case, the interest was paid till the date of the Award as it was earlier to the date of taking possession of the land which was 22nd February, 2000. It is, therefore, pointed out that considering Section 34 of the Land Acquisition Act, 1894, the Petitioners are not entitled for interest from the date of the Award till the date of payment i.e. 22nd February, 2000.

6. At the hearing of the Petition, on behalf of the Petitioners, their learned Counsel contends that if the scheme of the Land Acquisition Act, 1894 is considered, it would be clear that compensation has to be paid when the Award is made. In the instant case, the date of the Award is 22nd January, 1997 and the date on which the compensation was paid is 22nd February, 2000. In these circumstances, it is pointed out that bearing in mind the provisions for payment of interest Petitioners are entitled to the same. Reliance is placed on various Judgments which would be adverted to in the course of the discussion.

7. On the other hand, on behalf of the Respondent No.1, learned Advocate General contends that

looking at the language of Section 34 of the Act, it would be clear that no interest is payable between the date of the Award and the date of taking possession. It is further pointed out that interest is payable on account of the fact that a person whose land has been acquired and who is deprived of the land in possession being taken, if not paid compensation is entitled to be paid interest for having lost possession of the land. It is, therefore, submitted that no interest is payable. At the highest on the facts and circumstances of a particular case if the Court so feels as a matter of equity some compensation can be paid. In these circumstances, it is contended that the Petitioners are not entitled for interest on the above Award and consequently there is no merit in this Writ Petition. It is pointed out that in the present case, the Petitioners had themselves informed the Land Acquisition Officer about the pending Inventory Proceedings and in those circumstances, Petitioners cannot complain of non payment of interest.

8. We will have to first consider the scheme of Land Acquisition Act, 1894 as amended by the Act of 1984. A reading of Sections 4, 6 and 11A would show the various periods within which, the Authorities under the Act are obliged to take steps. Under Section 11A, the Collector is bound to make an Award under Section 11

within a period of two years from the date of the publication of the declaration and if no Award is made within that period, the entire proceedings for the acquisition of the land lapses. Under Section 12, such an Award becomes final and binding between the parties. Under Section 12(2) immediate notice of the Award has to be given to such of the persons interested as are not present personally or by their representatives when the Award is made.

9. Under Section 17, in cases of urgency there is power in the appropriate Government to acquire the land. However, in all such cases, considering Sub-Section (3A) before taking possession of the land, the Collector shall, without prejudice to the provisions of Sub-Section (3) tender payment of 80% of the compensation for such land as estimated by him to the persons entitled thereto. Under Section 31(1) on the Collector making an Award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the Award, and shall pay it to them unless prevented by one or more of the contingencies mentioned in the next Sub-Section. Those contingencies are if the parties do not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the

compensation or as to the apportionment of it in which event the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted. Section 31(1) and (2) read as under:-

> **31. Payment of compensation or deposit of same in Court.**-(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless preventeed by some one or more of the contingencies mentioned in the next sub-section.
>
> (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the court to which a reference under section 18 would be submitted:
>
> Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount;
>
> Provided also that no person who has received the amount otheerwise than under protest shall be entitled to make any application under section 18:
>
> Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

10. Section 34 is the provision regarding interest which may be reproduced as under:-

> 34. **"Payment of interest.**- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.
>
> Provided that if such compensatino or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry".

The other relevant Section which needs to be reproduced and which will have to be considered is Section 23(1A):-

> "In addition to the market value of the land above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, Sub-Section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier".

11. From reading of Section 31(1) and Section 34 what becomes clear is that as soon as the Collector makes an Award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested and or entitled thereto according to the Award. In the event, there are disputes as contemplated under Section 31(2) then the amount must be deposited before the Court where a reference under Section 12 has to be submitted. A further duty is cast on the Reference Court under Section 32 to invest the monies in circumstances set out therein and payment of interest to persons who would be entitled thereto. Even otherwise such money is bound to be invested for the benefit of the parties who may become entitled to it.

The question, therefore, would be whether on the co-joint reading of these provisions whether any interest would be payable from the date of the Award, if the compensation is not paid or deposited till such time the money is paid or deposited.

12. A look at the provisions would disclose a duty on a Collector to make payment as soon as the Award is passed. The question is whether it is open to the Collector not to deposit the amount after the Award is made. Further in a case of failure to deposit,is not on account of any act, on the part of the persons entitled

to compensation what are the consequences.

Section 23(1A) would be of some assistance in considering whether a party would be entitled to interest and if not interest any compensation for the period when the compensation is not deposited or paid. The scheme of Section 23(1A) and the object thereto is set out in the case of **K. S. Paripoornan** v. **State of Kerala and others**, (1994) 5 SCC 593. Gainful reference can be made to paragraph 14 of the Judgment which is reproduced herein below:-

> "It was, however, found that there was a considerable time lag between the date of the publication of the notification under Section 4(1) and the date of the award of the Collector. The market value of the land acquired was however frozen to the date of the notification under Section 4(1). In order to relieve the hardship of the persons interested in the land(hereinafter compendiously termed as 'landowners' for the sake of convenience), the legislature for the first time introduced sub-section (1-A) in Section 23 of the principal Act by the amending Act. This sub-section enjoins the grant, in every case, of a further amount in addition to the market value. The amount is to be calculated at the rate of 12 per centum per annum on the market value for a specific period, namely, the period commencing on and from the date of the publication of the notification under Section 4(1) and ending with the date of the award of

> the Collector or the date of taking possession of the land, whichever is earlier. The Explanation to the said sub-section (1-A), states that in computing the period for which the said amount is to be granted, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court, shall be excluded. This provision like the one for solatium in sub-section (2) of Section 23, is a substantive one....."

In **Prem Nath Kapur and another** v. **National Fertilizers Corpn. of India Ltd. and others** reported in (1996) 2 SCC 71, the Apex Court was considering the scheme of the various provisions of the Land Acquisition Act by the amendments brought by the Act of 1984. Dealing with Section 23(1A), this is what the Apex Court observed:-

> "Thus we hold that the liability to pay interest on the amount of compensation determined under Section 23(1) continues to subsist until it is paid to the owner or interested person or deposited into court under Section 34 read with Section 31.....".

Considering the scheme of Section 31, this is what the Apex Court observed:-

> "Section 31 enjoins that the Collector on making the award under Section 11, shall tender payment of the compensation to the persons interested entitled

> thereto according to the award. He shall also pay the same to them, unless prevented by one or more contingencies mentioned in Sub-Section (2). In that event, he "shall deposit the amount of compensation in the court to which a reference under Section 18 would be submitted".

Considering Section 34, the Apex Court observed that when the amount of compensation is not paid or deposited on or before taking possession of the land the Collector shall pay the amount with interest thereon as per the rates prescribed under the Act.

We then have the Judgment of the Apex Court in **Sunder** v. **Union of India** reported in (2001) 7 SCC 211. It may at the out-set be mentioned that what was really an issue in that Judgment was whether the solatium payable under Section 23(2) would form part of the compensation under Section 23. While however answering the issue, the Apex Court was pleased to once again consider the scheme of the Act and while so considering in paragraph 12, observed as under:-

> "This means that law does not relish any delay in making the payment once the award is made. Thus, making the award shall normally follow the payment of compensation as expeditiously as possible".

Proceeding further and considering the powers of the Collector under Section 11 before taking

possession under Section 10 the Court noted "But in the absence of a legal insistence that the amount awarded should necessarily be paid before taking possession of the land, it could happen, perhaps quite often, that there would be some interregnum between the date of taking possession and making payment of the awarded sum". The Court then observed that the question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land.

13. At this juncture, we may note the Judgment cited on behalf of the Petitioners herein in the case of **Chandra Bansi Singh and others** v. **State of Bihar and others**, AIR 1984 SC 1767. The facts of that case need not be stated, suffice it to say that there was challenge to the Award being made considering that appropriate Government therein had released part of the land covered by the Notification. The Apex Court held that it would not be proper to strike down the Notification/declaration itself but in the facts and circumstances, the Apex Court observed as under:-

> "On the analysis of the various steps taken by the parties and others in the taking of possession there is undoubtedly a delay of about 1 1/2 years and for the purpose of calculation and convenience when rounded off, the delay may be taken to be of two years. So

> far as this delay is concerned, the appellants have undoubtedly a case for payment of some additional compensation in equity though not under law and as this Court is not only a Court of law but a Court of equity as well, it will be impossible for us to deny this relief to the Appellants.....".

In that case, interest calculated at 7 1/2% per annum for two years on the value of the land was directed to be paid as equitable compensation.

A Division Bench of the Andhra Pradesh High Court in the case of **RF(Rasat and Farhat) Charitable Trust, Hyderabad** v. **Special Deputy Collector(General) Land Acquisition, Hyderabad and others** reported in AIR 1992 Andhra Pradesh 130 had applied the said ratio to the case before it. The learned Division Bench also held that grant of such additional compensation was in respect of an ascertained sum of money due to the appellant under the terms of the agreement. The grant of interest would, therefore, not be contrary to the provisions of the Interest Act, 1839 which was in force at the relevant time.

14. Is it, open to the Land Acquisition Officer to defer taking possession indefinitely or must it be within the reasonable time and if within the reasonable time considering the object of Section 23(1-A) must the party be denied interest or additional compensation on

the failure to exercise the statutory duty by the Land Acquisition Officer? It may also be noted here that in a case where Government makes an Award but does not take possession, and gives up the acquisition there is a duty cast to pay compensation in terms of Section 48 of the Land Acquisition Act. That Section contemplates that whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land. It may be noted that until possession is taken, it is the owner of the land who has to protect the land from encroachment. It is, therefore, the duty of the owner of the land to protect the land. We may now consider some Judgments, to find out what happens in a case where a statutory duty is cast, the statutory authority fails to discharge the duty.

In **Ram Chand and others** v. **Union of India and others** reported in (1994) 1 SCC 44 the issue was where no time limit is prescribed for exercise of power then how should it be exercised. The Apex Court after considering the matter held that it should be exercised

within a reasonable time. This is for the purpose of breaching the gap between the date of passing the Award and the taking of possession in a case where compensation has not been paid at the time of making the Award or deposited in the Court as mandated by law.

The scope and object of Section 23(1-A) and the duty to exercise statutory power in the reasonable fair manner was again considered by the Apex Court in **State of Tamil Nadu** v. **L. Krishnan,** AIR 1996 SC 497. The Apex Court reiterated what has been set out in **Ram Chand** v. **Union od India**(supra) in the following words:-

> "..... It is this concern which has led the Parliament to enact various time limits for making the declaration under Section 6 and for making the Award by way of Amendment Act 68 of 1984. The person who is deprived of the land must be given his due compensation without avoidable delay. This obligation flows from the duty to exercise statutory power in a reasonable and fair manner more particularly where the subject matter is acquisition of land/property ....."

On the other hand, on behalf of the Respondents, learned Advocate General has referred to various Judgments. The Judgments are on two aspects. The first line of a Judgment cited is basically on computing of interest for the purpose of Court Fees.

Those Judgments in our opinion would not really assist the Court in deciding the issue which is in issue before us. The Second line of authorities relied upon are as to when interest would be payable. Reliance is placed in the case of **Inglewood Pulp and Paper Co.Ltd.** v. **New Brunswick Electric Power Commission,** AIR 1928 Privy Council 287. The same principle was followed by the Apex Court in **Abhay Singh Surana and others** v. **Secy., Ministry of Communication and others** reported in AIR 1987 SC 2177. The ratio decidandi of those Judgments, is that interest would be payable when possession of the land is lost and not otherwise. In **S.Prabh Singh Dhillon and others** v. **Hoshlarpur Improvement Trust and others** reported in (1996) 1 SCC 309, the Apex Court considering the scheme of Sections 34, 28 and 23(1-A) was pleased to hold that in so far as the payment of interest is concerned that it was intended to mitigate the hardship caused to the owner by deprivation of enjoyment of their property, after possession was taken. Since the possession was admittedly with the Petitioners, they are not entitled to payment of interest under Section 34 or 28 or in so far as Section 23 is concerned also of that Section.

15. We have earlier reproduced Section 34. A reading of Section 34 would show that when the amount of such compensation is not paid then the Collector shall

pay the amount awarded with interest thereon at the rate of 9% per annum from the time of so taking possession until it shall be so paid or deposited. Possession before this Award can only be taken in those cases when the urgency clause is applied under Section 17. This is so explained. Is it then open to the Collector after making the Award not to pay or deposit the amount awarded. On failure of such statutory duty what is the remedy of a person entitled to the compensation. On behalf of the Petitioners reliance is placed on the Judgment in the case of **Sunder** v. **Union of India**(supra) to show that interest must be paid in such a case. In our opinion that Judgment has not really answered the issue. The ratio of that Judgment as already pointed out was not the issue of payment of interest. What was in issue in that case was whether solatium under Section 23(1-A) would form part of compensation. The other observations at the highest are obitor dicta on the scope and provisions of the Land Acquisition Act. However, the observations of the Apex Court in **S. Prabh Singh Dhillon and others** v. **Hoshlarpur Improvement Trust and others**(supra) should assist us in answering the issue raised on behalf of the Petitioners herein.

16. The entire purpose and scheme of the Amendment Act of 1984 of introducing Section 23(1-A), is to provide for compensation between the date of the

Notification under Section 4, and the date of making the Award, under the Act as it now exists, at least five years can elapse. The market value of the land is fixed as on the date of Notification under Section 4. In these circumstances, Parliament thought it fit to compensate the persons who are deprived of the land with such additional compensation from the date of Notification to the date of the Award in terms of Section 23(1-A). Can that object be frustrated after the Award is passed because the Land Acquisition Officer who otherwise was bound to pay or deposit the compensation on passing the Award, has failed to discharge his statutory duties under the Act? The learned Advocate General sought to point out that if the Award is not so made then in that case, it would not be an Award. It will not be possible to accept that argument, considering the language of Section 12 of the Act. When the Award is made, irrespective whether amount is paid or not the Award becomes final, and for the purpose of Section 18 it is that Award if the party is not satisfied which gives them the legal right to apply for a reference. There is, therefore, a reasonable duty cast on the Land Acquisition Officer in terms of Section 31 to pay or deposit the compensation. Otherwise, the intention of Parliamennt as envisaged in Section 23(1-A) would be defeated. It cannot be read to mean that in so far as upto the date of Award, a person

deprived of his land will be entitled to compensation at the rate of 12% but after the Award is passed the person till such time as the compensation is paid is neither entitled to interest as contemplated in Section 34 of the Land Acquisition Act nor to the compensation under Section 23(1-A). The Act must be given its true meaning or purpose. The true purpose would be that a statutory duty is cast on the Land Acquisition Officer to pay the amount awarded as soon as the Award is made considering Section 31 or deposit the same. If, the amount is disputed then to deposit in the Court as contemplated under Section 31(2).

17. What happens in a case where there is a failure by the Land Acquisition Officer in performing the statutory duty. In our opinion if the person who is deprived of the land and whose land is required is not responsible for delay in receiving the compensation or in depositing the money, then in that event as set out in the Judgment of the Apex Court in the case of **State of Chandra Bansi Singh and others** v. **State of Bihar and others**(supra) as also in the Judgment of the Apex Court in the case of **Prem Nath Kapur and another** v. **National Fertilizers Corp. of India Ltd. and others**(supra) equitable considerations would arise and a land owner will have to be compensated. The Award of compensation really would then be within the jurisdiction of the

Court and based on equitable consideration. As we have found however there are a large number of cases where though the Award is passed compensation is not paid or deposited at the time when the Award is passed. Two situations would arise, considering the provisions of the Act itself, to consider payment of compensation at the equitable rate of 12% as set out under Section 23(1-A) or to pay compensation in terms of the interest provided under Section 34 which is 9% per annum for the first year and thereafter at the rate of 15% In our opinion, in such cases if the State has not paid the money or fails to discharge its statutory obligation the Court must bear these statutory provisions and the intent of Parliament in mind. In these circumstances, we are of the opinion that the compensation payable considering Section 23(1-A) ought to be 12% and at least should be at the rate of 9%, till the amount is paid or deposited. We would adopt 9% considering the falling rates of interest. We make it clear that delay must be substantial at any rate for payment of such equitable compensation, it should at least be six months. Therefore, cases, where the amount is not paid or deposited within six months from the date of making the Award and the delay is not on account of the person affected then such person would be entitled to compensation as a rule, which would be quantified at the

rate of 9% from the date of the Award till the amount is paid.

18. On the facts of the present case, we find that the Petitioners are not at fault. The mere fact that the Inventory Proceedings were concluded after the Award is made is of no consequence. If there was a dispute about the share, the Land Acquisition Officer ought to have deposited the amount in the Reference Court. The Award was passed in January, 1997. The Inventory was concluded on 22nd April, 1996. The Land Acquisition Officer was informed on 25th July, 1997. Compensation was paid only on 22nd February, 2000. The acquisition was not only of the Petitioners land but also other lands which were the subject matter of the Notification. In the light of that, the following Order:-

The Respondents are directed to pay on the sum of Rs.2,28,603.46 interest by way of compensation at 9% from 23rd January, 1997 to 19th February, 2000. The interest shall be paid in proportion to the shares of Award of the parties who were awarded compensation. Rule. In the circumstances of the case there shall be no order as to costs.

P. V. HARDAS, J. F. I. REBELLO, J.